Approvals	
City Attorney	
Finance Director	
City Manager	

CITY OF TEMECULA
AGENDA REPORT

TO: City Manager/City Council

FROM: Luke Watson, Director of Community Development

DATE: January 12, 2016

SUBJECT: Introduce a Citywide Ordinance Prohibiting the Cultivation of Marijuana Within the City of Temecula

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PREPARED BY: Dale West, Associate Planner

RECOMMENDATION: That the City Council introduce and read by title only an ordinance entitled:

ORDINANCE NO. 16-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA ADDING CHAPTER 8.52, MARIJUANA CULTIVATION, TO THE TEMECULA MUNICIPAL CODE TO PROHIBIT THE CULTIVATION OF MARIJUANA IN THE CITY, AMENDING THE ZONING ORDINANCE TO PROHIBIT MARIJUANA CULTIVATION IN ALL ZONES, AMENDING THE DEFINITION OF ENFORCEMENT OFFICIAL AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)

SUMMARY OF ORDINANCE: The proposed Ordinance amends the Temecula Municipal Code, to add Chapter 8.52, Marijuana Cultivation, prohibiting all marijuana cultivation in the City, amendment to Sections 17.06.030, 17.080.030 and 17.14.030 of the Zoning Code to prohibit the cultivation of marijuana in residential, commercial, office, industrial and open space zones in the City, and an amendment to the definition of enforcement official contained in Section 1.21 of the Temecula Municipal Code.

BACKGROUND: In 1996, California voters adopted the Compassionate Use Act ("CUA") as a ballot initiative, codified as Health and Safety Code Section 11362.5. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition did not supersede legislation prohibiting persons from engaging in conduct that

endangers others, or to condone the diversion of marijuana for non-medical purposes. The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

In 2004, Senate Bill 420 referred to as the "Medical Marijuana Program" (MMP), was passed to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.

In 2010 and 2011, Assembly Bill 2650 and Assembly Bill 1300 (respectively) amended the Medical Marijuana Program Act to expressly recognize the authority of counties and cities to regulate the location, operation, or establishment of a medical marijuana cooperatives or collectives and to civilly and criminally enforce such ordinances. Since AB 2650 and AB 1300, the California courts have found that neither the CUA nor the MMP provide medical marijuana patients with an unfettered right to obtain, cultivate, or dispense marijuana for medical purposes. Rather, the statutes set up limited defenses to state criminal prosecution.

In 2013, the Court of Appeal decided and published its decision in the case of Maral v. City of Live Oak, 221 Cal.App.4th 975 (2013). Maral held that cities have authority to prohibit cultivation of all medical marijuana city-wide. The Maral court similarly found that the CUA and MMP do not preempt a city's regulatory authority to prohibit all cultivation in the city, if the city so chooses. The Maral case is a published decision from the Court of Appeal and constitutes legal precedent upon which cities may rely. The plaintiffs in the Maral case petitioned the California Supreme Court seeking review and/or depublication of the case. The Supreme Court has declined to take the case, and it has denied the request for depublication. The decision in the Maral case, therefore, is final and represents the current law of the State.

In 2015, the Governor signed into law Assembly Bill 243, Assembly Bill 266, and Assembly Bill 643 establishing the Medical Marijuana Regulation and Safety Act ("the Act") effective January 1, 2016. The Act regulates "commercial cannabis activity" which includes "cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medial cannabis or a medical cannabis product." These bills are designed to impose additional regulatory mechanisms related to medical marijuana. For example, there will be a dual licensing structure which requires a state and local license or permit in order to cultivate, dispense or transport medical marijuana. This means that any person or entity engaged in commercial cannabis activity have both a state license and a local license or permit, to operate in the state. In other words, if a city prohibits or bans marijuana dispensaries in its jurisdiction, then the marijuana dispensary will be unable to obtain a state license for commercial cannabis activity in that city, since the marijuana dispensary is required to first obtain a local permit, license, or authorization from the city. The Act expressly protects local licensing practices, zoning ordinances, and local actions taken under a city's constitutional police power.

The Act allows cities that wish to ban these land use activities to continue to do so; however, there are critical time constraints. Assembly Bill 243 includes a provision stating that cities that do not have an ordinance regulating or prohibiting cultivation by March 1, 2016, will lose the authority to regulate or ban cultivation within their city limits and the state will become the sole licensing authority.

It should be noted that the Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to

cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes. The manufacture, distribution, or possession of marijuana remains unlawful and a federal crime under the Federal Controlled Substance Act (21 U.S.C. §§ 812, 841, 844).

ANALYSIS: In light of the Maral decision and the Act signed by the Governor, staff was advised by the City Attorney to review its current ordinance and Municipal Code and, if necessary, draft an ordinance regulating marijuana cultivation within the City limits.

In 2006, the City Council adopted Ordinance No. 06-05, which defines a medical marijuana dispensary, and prohibits them within the City. After review of Ordinance No. 06-05, staff has determined that it does not regulate the cultivation of marijuana within the City. As mentioned before, a city that does not have land use regulations or an ordinance regulating or prohibiting cultivation of marijuana in effect by March 1, 2016, will lose the authority to regulate or ban cultivation within its city limits, and the state will become the sole licensing authority. Therefore, staff is proposing to ban the cultivation of marijuana due to its potential negative secondary effects and to establish consistency with current City regulations regarding the prohibition of medical marijuana dispensaries.

On December 16, 2015 the Planning Commission considered the proposed ordinance and environmental review and adopted a resolution recommending that the City Council approve the staff recommendation as presented.

ENVIRONMENTAL FINDINGS: The City Council finds that the adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Section 15061(b)(3). It can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The ordinance bans the growing of marijuana. Placing such a restriction on the use of property will not result in a permanent alteration of property nor the construction of any new or expanded structures. The adoption of this Ordinance imposes greater limitations on uses allowed in the City and therefore will eliminate adverse environmental impacts.

FISCAL IMPACT: The adoption of the proposed ordinance will have no direct fiscal impact to the City's General Fund.

ATTACHMENTS:

1. Draft Marijuana Cultivation Ordinance
2. Planning Commission Staff Report
3. Notice of Public Hearing

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THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 8.52, Marijuana Cultivation, is hereby added to the Temecula Municipal Code to read as follows:

CHAPTER 8.52 - MARIJUANA CULTIVATION

8.52.010 Findings and purpose.

The City Council finds and declares the following:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 *et seq.*, and referred to as the "Medical Marijuana Program") to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana

Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

D. The Medical Marijuana Regulation and Safety Act was enacted by Chapters 688, 698 and 719 of the Statutes of 2015 and is found at Chapter 3.5 of Division 8 of the Business and Professions Code. While the Act establishes standards for the licensed cultivation of medical marijuana, including, but not limited to, the establishment of uniform state minimum health and safety standards, and testing standards, the state requirements established under the Medical Marijuana Regulation and Safety Act authorize a city to prohibit all cultivation of medical marijuana.

E. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land..." Additionally, in *Maral v. City of Live Oa*k (2013) 221 Cal. App.4th 975, the Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana..." The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

F. In *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704, the California Court of Appeal found that the CUA does not confer a right to cultivate marijuana and that an ordinance limiting the number of medical marijuana plants that may be grown outside, precluding marijuana cultivation within 1000 feet of schools, parks, and churches, and requiring that an opaque fence of at least six feet to be installed around all marijuana grows was not preempted by state law. Further, in *Maral* the Court of Appeal held that the CUA and the MMP do not preempt a city's police power to completely prohibit the cultivation of all marijuana within that City.

G. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

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